

Adopted	Rejected
---------	----------

COMMITTEE REPORT

YES:	12
NO:	1

MR. SPEAKER:

*Your Committee on Labor and Employment, to which was referred Senate Bill 71, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill **be amended** as follows:*

- 1 Page 1, strike lines 9 through 15.
- 2 Page 1, line 16, strike "(3) is operated by a nonprofit".
- 3 Page 1, line 16, delete "entity," and insert "~~entity~~".
- 4 Page 1, line 16, delete "a municipality (as defined".
- 5 Page 1, delete line 17.
- 6 Page 1, line 18, strike "(c)" and insert "**(b)**".
- 7 Page 2, between lines 7 and 8, begin a new paragraph and insert:
- 8 "SECTION 2. IC 20-8.1-4-25.5 IS ADDED TO THE INDIANA
- 9 CODE AS A NEW SECTION TO READ AS FOLLOWS
- 10 [EFFECTIVE JULY 1, 2002]: **Sec. 25.5. (a) This section does not**
- 11 **provide an exception to the hours a child is permitted to work**
- 12 **under section 20 of this chapter.**
- 13 **(b) It is unlawful for a person, firm, limited liability company,**
- 14 **or corporation to permit a child who is:**
- 15 **(1) less than eighteen (18) years of age; and**
- 16 **(2) employed by the person, firm, limited liability company, or**

1 **corporation;**
 2 **to work after 10 p.m. and before 6 a.m. in an establishment that is**
 3 **open to the public unless another employee at least eighteen (18)**
 4 **years of age also works in the establishment during the same hours**
 5 **as the child.**

6 SECTION 3. IC 20-8.1-4-31, AS AMENDED BY P.L.122-2001,
 7 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 8 JULY 1, 2002]: Sec. 31. (a) A person, firm, limited liability company,
 9 or corporation that violates this chapter may be assessed the following
 10 civil penalties by the department of labor:

11 (1) For an employment certificate violation under section 1 or 13
 12 of this chapter, the following:

13 (A) A warning letter for any violations identified during an
 14 initial inspection.

15 (B) Fifty dollars (\$50) per instance for a second violation
 16 identified in a subsequent inspection.

17 (C) Seventy-five dollars (\$75) per instance for a third violation
 18 that is identified in a subsequent inspection.

19 (D) One hundred dollars (\$100) per instance for a fourth or
 20 subsequent violation that:

21 (i) is identified in an inspection subsequent to the inspection
 22 under clause (C); and

23 (ii) occurs not more than two (2) years after a prior violation.

24 (2) For a posting violation under section 23 of this chapter, the
 25 following:

26 (A) A warning letter for any violations identified during an
 27 initial inspection.

28 (B) Fifty dollars (\$50) per instance for each violation
 29 identified in a subsequent inspection.

30 (C) Seventy-five dollars (\$75) per instance for a third violation
 31 that is identified in a subsequent inspection.

32 (D) One hundred dollars (\$100) per instance for a fourth or
 33 subsequent violation that:

34 (i) is identified in an inspection subsequent to the inspection
 35 under clause (C); and

36 (ii) occurs not more than two (2) years after a prior violation.

37 (3) For a termination notice violation under section 11 of this
 38 chapter, the following:

- 1 (A) A warning letter for any violations identified during an
- 2 initial inspection.
- 3 (B) Fifty dollars (\$50) per instance for each violation
- 4 identified in a subsequent inspection.
- 5 (C) Seventy-five dollars (\$75) per instance for a third violation
- 6 that is identified in a subsequent inspection.
- 7 (D) One hundred dollars (\$100) per instance for a fourth or
- 8 subsequent violation that:
- 9 (i) is identified in an inspection subsequent to the inspection
- 10 under clause (C); and
- 11 (ii) occurs not more than two (2) years after a prior violation.
- 12 (4) For an hour violation of not more than thirty (30) minutes
- 13 under section 20 of this chapter, the following:
- 14 (A) A warning letter for any violations identified during an
- 15 initial inspection.
- 16 (B) Fifty dollars (\$50) per instance for each violation
- 17 identified in a subsequent inspection.
- 18 (C) Seventy-five dollars (\$75) per instance for a third violation
- 19 that is identified in a subsequent inspection.
- 20 (D) One hundred dollars (\$100) per instance for a fourth or
- 21 subsequent violation that:
- 22 (i) is identified in an inspection subsequent to the inspection
- 23 under clause (C); and
- 24 (ii) occurs not more than two (2) years after a prior violation.
- 25 (5) For an hour violation of more than thirty (30) minutes under
- 26 section 20 of this chapter, the following:
- 27 (A) A warning letter for any violations identified during an
- 28 initial inspection.
- 29 (B) One hundred dollars (\$100) per instance for each violation
- 30 identified in a subsequent inspection.
- 31 (C) Two hundred dollars (\$200) per instance for a third
- 32 violation that is identified in a subsequent inspection.
- 33 (D) Four hundred dollars (\$400) per instance for a fourth or
- 34 subsequent violation that:
- 35 (i) is identified in an inspection subsequent to the inspection
- 36 under clause (C); and
- 37 (ii) occurs not more than two (2) years after a prior violation.
- 38 (6) For a hazardous occupation violation under section 25 or **25.5**

of this chapter, the following:

(A) A warning letter for any violations identified during an initial inspection.

(B) One hundred dollars (\$100) per instance for each violation identified in a subsequent inspection.

(C) Two hundred dollars (\$200) per instance for a third violation that is identified in a subsequent inspection.

(D) Four hundred dollars (\$400) per instance for a fourth or subsequent violation that:

(i) is identified in an inspection subsequent to the inspection under clause (C); and

(ii) occurs not more than two (2) years after a prior violation.

(7) For an age violation under section 21 or 21.5 of this chapter, the following:

(A) A warning letter for any violations identified during an initial inspection.

(B) One hundred dollars (\$100) per instance for each violation identified in a subsequent inspection.

(C) Two hundred dollars (\$200) per instance for a third violation that is identified in a subsequent inspection.

(D) Four hundred dollars (\$400) per instance for a fourth or subsequent violation that:

(i) is identified in an inspection subsequent to the inspection under clause (C); and

(ii) occurs not more than two (2) years after a prior violation.

(8) For each minor employed in violation of section 21(b) of this chapter, the following:

(A) A warning letter for any violations identified during an initial inspection.

(B) One hundred dollars (\$100) per instance for each violation identified in a subsequent inspection.

(C) Two hundred dollars (\$200) per instance for a third violation that is identified in a subsequent inspection.

(D) Four hundred dollars (\$400) per instance for a fourth or subsequent violation that:

(i) is identified in an inspection subsequent to the inspection under clause (C); and

(ii) occurs not more than two (2) years after a prior violation.

(9) For each violation of section 20.5 of this chapter, the following:

(A) A warning letter for any violations identified during an initial inspection.

(B) One hundred dollars (\$100) per instance for each violation identified in a subsequent inspection.

(C) Two hundred dollars (\$200) per instance for a third violation that is identified in a subsequent inspection.

(D) Four hundred dollars (\$400) per instance for a fourth or subsequent violation that:

(i) is identified in an inspection subsequent to the inspection under clause (C); and

(ii) occurs not more than two (2) years after a prior violation.

(b) A civil penalty assessed under subsection (a):

(1) is subject to IC 4-21.5-3-6; and

(2) becomes effective without a proceeding under IC 4-21.5-3 unless a person requests an administrative review not later than thirty (30) days after notice of the assessment is given.

(c) For purposes of determining whether a second violation has occurred when assessing a civil penalty under subsection (a), a first violation expires one (1) year after the date of issuance of a warning letter by the department of labor under subsection (a).

(d) For purposes of determining recurring violations of this section, each location of an employer shall be considered separate and distinct from another location of the same employer.

(e) There is established an employment of youth fund for the purpose of educating affected parties on the purposes and contents of this chapter and the responsibilities of all parties under this chapter. One-half (1/2) of the fund each year shall be used for the purpose of the education provision of this subsection. This portion of the fund may be used to award grants to provide educational programs. The remaining one-half (1/2) of the fund shall be used each year for the expenses of hiring and salaries of additional inspectors to enforce this chapter under section 29 of this chapter. All inspectors hired to enforce this chapter shall also be available to educate affected parties on the purposes and contents of this chapter and the responsibilities of all parties under this chapter. The fund shall be administered by the department of labor. The expenses of administering the fund shall be paid from money in

the fund. The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested. Interest that accrues from these investments shall be deposited in the fund. Money in the fund at the end of a state fiscal year does not revert to the state general fund. Revenue received from civil penalties under this section shall be deposited in the employment of youth fund.

SECTION 4. IC 22-3-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 2. (a) Every employer and every employee, except as stated in IC 22-3-2 through IC 22-3-6, shall comply with the provisions of IC 22-3-2 through IC 22-3-6 respectively to pay and accept compensation for personal injury or death by accident arising out of and in the course of the employment, and shall be bound thereby, **except as provided in section 2.6 of this chapter.**

(b) IC 22-3-2 through IC 22-3-6 does not apply to railroad employees engaged in train service as:

- (1) engineers;
- (2) firemen;
- (3) conductors;
- (4) brakemen;
- (5) flagmen;
- (6) baggagemen; or
- (7) foremen in charge of yard engines and helpers assigned thereto.

(c) IC 22-3-2 through IC 22-3-6 does not apply to employees of municipal corporations in Indiana who are members of:

- (1) the fire department or police department of any such municipality; and
- (2) a firefighters' pension fund or of a police officers' pension fund.

However, if the common council elects to purchase and procure worker's compensation insurance to insure said employees with respect to medical benefits under IC 22-3-2 through IC 22-3-6, the medical provisions of IC 22-3-2 through IC 22-3-6 apply to members of the fire department or police department of any such municipal corporation who are also members of a firefighters' pension fund or a police officers' pension fund.

(d) When any municipal corporation purchases or procures worker's

1 compensation insurance covering members of the fire department or
 2 police department who are also members of a firefighters' pension fund
 3 or a police officers' pension fund, and pays the premium or premiums
 4 for such insurance, the payment of such premiums is a legal and
 5 allowable expenditure of funds of any municipal corporation.

6 (e) Except as provided in subsection (f), where the common council
 7 has procured worker's compensation insurance under this section, any
 8 member of such fire department or police department employed in the
 9 city carrying such worker's compensation insurance under this section
 10 is limited to recovery of medical and surgical care, medicines,
 11 laboratory, curative and palliative agents and means, x-ray, diagnostic
 12 and therapeutic services to the extent that such services are provided
 13 for in the worker's compensation policy procured by such city, and shall
 14 not also recover in addition to that policy for such same benefits
 15 provided in IC 36-8-4.

16 (f) If the medical benefits provided under a worker's compensation
 17 policy procured by the common council terminate for any reason before
 18 the police officer or firefighter is fully recovered, the common council
 19 shall provide medical benefits that are necessary until the police officer
 20 or firefighter is no longer in need of medical care.

21 (g) The provisions of IC 22-3-2 through IC 22-3-6 apply to:

- 22 (1) members of the Indiana general assembly; and
- 23 (2) field examiners of the state board of accounts.

24 SECTION 5. IC 22-3-2-2.6 IS ADDED TO THE INDIANA CODE
 25 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 26 1, 2002]: **Sec. 2.6. (a) In addition to section 2 of this chapter, in the
 27 event of a terrorist attack (as determined by the worker's
 28 compensation board) every employer shall pay and every employee
 29 shall accept compensation for injury or death occurring while:**

30 **(1) the employee was engaged in the duties of employment at
 31 the time of the terrorist attack; or**

32 **(2) the employee was traveling to or from the place of
 33 employment whether or not during working hours, and:**

34 **(A) had reached the employer's premises;**

35 **(B) had reached the area where the employee parks a
 36 motor vehicle; or**

37 **(C) was in such close proximity to the place of employment
 38 as to be injured or killed as a result of a terrorist attack**

that directly involved the employer's premises or adjacent areas, including, but not limited to, adjacent travel routes and parking garages.

(b) Section 2 of this chapter and subsection (a) apply regardless of:

(1) whether the employee's activities were a benefit to the employer at the time of the terrorist attack; or

(2) whether the terrorist act occurred during the employee's:

(A) lunch; or

(B) rest;

period.

SECTION 6. IC 22-3-2-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 8. (a) No compensation is allowed for an injury or death due to the employee's:

(1) knowingly self-inflicted injury;

(2) his intoxication;

(3) his commission of an offense; his knowing failure to use a safety appliance;

(4) his knowing failure to obey a reasonable written or printed rule of the employer which has been posted in a conspicuous position in the place of work other than an order or regulation set forth in subsection (b)(2); or

(5) his knowing failure to perform any statutory duty.

The burden of proof is on the defendant.

(b) This subsection does not apply to compensation due to a school to work student under section 2.5(b)(2) of this chapter. Each payment of monetary compensation allowed under IC 22-3-3-8, IC 22-3-3-9, IC 22-3-3-10, IC 22-3-3-21, or IC 22-3-3-22 shall be reduced by fifteen percent (15%) for an injury or a death caused in any degree by the employee's intentional:

(1) failure to use a safety appliance furnished by the employer or required by the employer to be used by the employee; or

(2) failure to obey a lawful order or administrative regulation issued by:

(A) the worker's compensation board; or

(B) the employer;

for the safety of the employees or the public.

SECTION 7. IC 22-3-6-1, AS AMENDED BY P.L.202-2001,

1 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
2 JULY 1, 2002]: Sec. 1. In IC 22-3-2 through IC 22-3-6, unless the
3 context otherwise requires:

4 (a) "Employer" includes the state and any political subdivision, any
5 municipal corporation within the state, any individual or the legal
6 representative of a deceased individual, firm, association, limited
7 liability company, or corporation or the receiver or trustee of the same,
8 using the services of another for pay. A parent corporation and its
9 subsidiaries shall each be considered joint employers of the
10 corporation's, the parent's, or the subsidiaries' employees for purposes
11 of IC 22-3-2-6 and IC 22-3-3-31. Both a lessor and a lessee of
12 employees shall each be considered joint employers of the employees
13 provided by the lessor to the lessee for purposes of IC 22-3-2-6 and
14 IC 22-3-3-31. If the employer is insured, the term includes the
15 employer's insurer so far as applicable. However, the inclusion of an
16 employer's insurer within this definition does not allow an employer's
17 insurer to avoid payment for services rendered to an employee with the
18 approval of the employer. The term also includes an employer that
19 provides on-the-job training under the federal School to Work
20 Opportunities Act (20 U.S.C. 6101 et seq.) to the extent set forth in
21 IC 22-3-2-2.5.

22 (b) "Employee" means every person, including a minor, in the
23 service of another, under any contract of hire or apprenticeship, written
24 or implied, except one whose employment is both casual and not in the
25 usual course of the trade, business, occupation, or profession of the
26 employer.

27 (1) An executive officer elected or appointed and empowered in
28 accordance with the charter and bylaws of a corporation, other
29 than a municipal corporation or governmental subdivision or a
30 charitable, religious, educational, or other nonprofit corporation,
31 is an employee of the corporation under IC 22-3-2 through
32 IC 22-3-6.

33 (2) An executive officer of a municipal corporation or other
34 governmental subdivision or of a charitable, religious,
35 educational, or other nonprofit corporation may, notwithstanding
36 any other provision of IC 22-3-2 through IC 22-3-6, be brought
37 within the coverage of its insurance contract by the corporation by
38 specifically including the executive officer in the contract of

1 insurance. The election to bring the executive officer within the
2 coverage shall continue for the period the contract of insurance is
3 in effect, and during this period, the executive officers thus
4 brought within the coverage of the insurance contract are
5 employees of the corporation under IC 22-3-2 through IC 22-3-6.

6 (3) Any reference to an employee who has been injured, when the
7 employee is dead, also includes the employee's legal
8 representatives, dependents, and other persons to whom
9 compensation may be payable.

10 (4) An owner of a sole proprietorship may elect to include the
11 owner as an employee under IC 22-3-2 through IC 22-3-6 if the
12 owner is actually engaged in the proprietorship business. If the
13 owner makes this election, the owner must serve upon the owner's
14 insurance carrier and upon the board written notice of the
15 election. No owner of a sole proprietorship may be considered an
16 employee under IC 22-3-2 through IC 22-3-6 until the notice has
17 been received. If the owner of a sole proprietorship is an
18 independent contractor in the construction trades and does not
19 make the election provided under this subdivision, the owner
20 must obtain an affidavit of exemption under IC 22-3-2-14.5.

21 (5) A partner in a partnership may elect to include the partner as
22 an employee under IC 22-3-2 through IC 22-3-6 if the partner is
23 actually engaged in the partnership business. If a partner makes
24 this election, the partner must serve upon the partner's insurance
25 carrier and upon the board written notice of the election. No
26 partner may be considered an employee under IC 22-3-2 through
27 IC 22-3-6 until the notice has been received. If a partner in a
28 partnership is an independent contractor in the construction trades
29 and does not make the election provided under this subdivision,
30 the partner must obtain an affidavit of exemption under
31 IC 22-3-2-14.5.

32 (6) Real estate professionals are not employees under IC 22-3-2
33 through IC 22-3-6 if:

34 (A) they are licensed real estate agents;

35 (B) substantially all their remuneration is directly related to
36 sales volume and not the number of hours worked; and

37 (C) they have written agreements with real estate brokers
38 stating that they are not to be treated as employees for tax

1 purposes.

2 (7) A person is an independent contractor in the construction
3 trades and not an employee under IC 22-3-2 through IC 22-3-6 if
4 the person is an independent contractor under the guidelines of
5 the United States Internal Revenue Service.

6 (8) An owner-operator that provides a motor vehicle and the
7 services of a driver under a written contract that is subject to
8 IC 8-2.1-24-23, 45 IAC 16-1-13, or 49 CFR 1057, to a motor
9 carrier is not an employee of the motor carrier for purposes of
10 IC 22-3-2 through IC 22-3-6. The owner-operator may elect to be
11 covered and have the owner-operator's drivers covered under a
12 worker's compensation insurance policy or authorized
13 self-insurance that insures the motor carrier if the owner-operator
14 pays the premiums as requested by the motor carrier. An election
15 by an owner-operator under this subdivision does not terminate
16 the independent contractor status of the owner-operator for any
17 purpose other than the purpose of this subdivision.

18 (9) A member or manager in a limited liability company may elect
19 to include the member or manager as an employee under
20 IC 22-3-2 through IC 22-3-6 if the member or manager is actually
21 engaged in the limited liability company business. If a member or
22 manager makes this election, the member or manager must serve
23 upon the member's or manager's insurance carrier and upon the
24 board written notice of the election. A member or manager may
25 not be considered an employee under IC 22-3-2 through IC 22-3-6
26 until the notice has been received.

27 (10) An unpaid participant under the federal School to Work
28 Opportunities Act (20 U.S.C. 6101 et seq.) is an employee to the
29 extent set forth in IC 22-3-2-2.5.

30 (c) "Minor" means an individual who has not reached seventeen
31 (17) years of age.

32 (1) Unless otherwise provided in this subsection, a minor
33 employee shall be considered as being of full age for all purposes
34 of IC 22-3-2 through IC 22-3-6.

35 (2) If the employee is:

36 (A) a minor who, at the time of the accident, is employed,
37 required, suffered, or permitted to work in violation of
38 IC 20-8.1-4-25; or

1 **(B) a child less than eighteen (18) years of age who, at the**
 2 **time of the accident, is permitted to work in violation of**
 3 **IC 20-8.1-4-25.5;**

4 the amount of compensation and death benefits, as provided in
 5 IC 22-3-2 through IC 22-3-6, shall be double the amount which
 6 would otherwise be recoverable. The insurance carrier shall be
 7 liable on its policy for one-half (1/2) of the compensation or
 8 benefits that may be payable on account of the injury or death of
 9 the minor, and the employer shall be liable for the other one-half
 10 (1/2) of the compensation or benefits. If the employee is a minor
 11 who is not less than sixteen (16) years of age and who has not
 12 reached seventeen (17) years of age and who at the time of the
 13 accident is employed, suffered, or permitted to work at any
 14 occupation which is not prohibited by law, this subdivision does
 15 not apply.

16 (3) A minor employee who, at the time of the accident, is a
 17 student performing services for an employer as part of an
 18 approved program under IC 20-10.1-6-7 shall be considered a
 19 full-time employee for the purpose of computing compensation
 20 for permanent impairment under IC 22-3-3-10. The average
 21 weekly wages for such a student shall be calculated as provided
 22 in subsection (d)(4).

23 (4) The rights and remedies granted in this subsection to a minor
 24 under IC 22-3-2 through IC 22-3-6 on account of personal injury
 25 or death by accident shall exclude all rights and remedies of the
 26 minor, the minor's parents, or the minor's personal
 27 representatives, dependents, or next of kin at common law,
 28 statutory or otherwise, on account of the injury or death. This
 29 subsection does not apply to minors who have reached seventeen
 30 (17) years of age.

31 (d) "Average weekly wages" means the earnings of the injured
 32 employee in the employment in which the employee was working at the
 33 time of the injury during the period of fifty-two (52) weeks
 34 immediately preceding the date of injury, divided by fifty-two (52),
 35 except as follows:

36 (1) If the injured employee lost seven (7) or more calendar days
 37 during this period, although not in the same week, then the
 38 earnings for the remainder of the fifty-two (52) weeks shall be

1 divided by the number of weeks and parts thereof remaining after
2 the time lost has been deducted.

3 (2) Where the employment prior to the injury extended over a
4 period of less than fifty-two (52) weeks, the method of dividing
5 the earnings during that period by the number of weeks and parts
6 thereof during which the employee earned wages shall be
7 followed, if results just and fair to both parties will be obtained.
8 Where by reason of the shortness of the time during which the
9 employee has been in the employment of the employee's employer
10 or of the casual nature or terms of the employment it is
11 impracticable to compute the average weekly wages, as defined
12 in this subsection, regard shall be had to the average weekly
13 amount which during the fifty-two (52) weeks previous to the
14 injury was being earned by a person in the same grade employed
15 at the same work by the same employer or, if there is no person so
16 employed, by a person in the same grade employed in the same
17 class of employment in the same district.

18 (3) Wherever allowances of any character made to an employee
19 in lieu of wages are a specified part of the wage contract, they
20 shall be deemed a part of his earnings.

21 (4) In computing the average weekly wages to be used in
22 calculating an award for permanent impairment under
23 IC 22-3-3-10 for a student employee in an approved training
24 program under IC 20-10.1-6-7, the following formula shall be
25 used. Calculate the product of:

- 26 (A) the student employee's hourly wage rate; multiplied by
27 (B) forty (40) hours.

28 The result obtained is the amount of the average weekly wages for
29 the student employee.

30 (e) "Injury" and "personal injury" mean only injury by accident
31 arising out of and in the course of the employment and do not include
32 a disease in any form except as it results from the injury.

33 (f) "Billing review service" refers to a person or an entity that
34 reviews a medical service provider's bills or statements for the purpose
35 of determining pecuniary liability. The term includes an employer's
36 worker's compensation insurance carrier if the insurance carrier
37 performs such a review.

38 (g) "Billing review standard" means the data used by a billing

1 review service to determine pecuniary liability.

2 (h) "Community" means a geographic service area based on zip
3 code districts defined by the United States Postal Service according to
4 the following groupings:

5 (1) The geographic service area served by zip codes with the first
6 three (3) digits 463 and 464.

7 (2) The geographic service area served by zip codes with the first
8 three (3) digits 465 and 466.

9 (3) The geographic service area served by zip codes with the first
10 three (3) digits 467 and 468.

11 (4) The geographic service area served by zip codes with the first
12 three (3) digits 469 and 479.

13 (5) The geographic service area served by zip codes with the first
14 three (3) digits 460, 461 (except 46107), and 473.

15 (6) The geographic service area served by the 46107 zip code and
16 zip codes with the first three (3) digits 462.

17 (7) The geographic service area served by zip codes with the first
18 three (3) digits 470, 471, 472, 474, and 478.

19 (8) The geographic service area served by zip codes with the first
20 three (3) digits 475, 476, and 477.

21 (i) "Medical service provider" refers to a person or an entity that
22 provides medical services, treatment, or supplies to an employee under
23 IC 22-3-2 through IC 22-3-6.

24 (j) "Pecuniary liability" means the responsibility of an employer or
25 the employer's insurance carrier for the payment of the charges for each
26 specific service or product for human medical treatment provided
27 under IC 22-3-2 through IC 22-3-6 in a defined community, equal to or
28 less than the charges made by medical service providers at the eightieth
29 percentile in the same community for like services or products.

30 SECTION 8. IC 22-3-7-2 IS AMENDED TO READ AS FOLLOWS
31 [EFFECTIVE JULY 1, 2002]: Sec. 2. (a) Every employer and every
32 employee, except as stated in this chapter, shall comply with this
33 chapter, requiring the employer and employee to pay and accept
34 compensation for disablement or death by occupational disease arising
35 out of and in the course of the employment, and shall be bound thereby,
36 **except as provided in section 10(c) of this chapter.**

37 (b) This chapter does not apply to employees of municipal
38 corporations in Indiana who are members of:

1 (1) the fire department or police department of any such
2 municipality; and

3 (2) a firefighters' pension fund or a police officers' pension fund.

4 However, if the common council elects to purchase and procure
5 worker's occupational disease insurance to insure said employees with
6 respect to medical benefits under this chapter, the medical provisions
7 apply to members of the fire department or police department of any
8 such municipal corporation who are also members of a firefighters'
9 pension fund or a police officers' pension fund.

10 (c) When any municipal corporation purchases or procures worker's
11 occupational disease insurance covering members of the fire
12 department or police department who are also members of a
13 firefighters' pension fund or a police officers' pension fund and pays the
14 premium or premiums for the insurance, the payment of the premiums
15 is a legal and allowable expenditure of funds of any municipal
16 corporation.

17 (d) Except as provided in subsection (e), where the common council
18 has procured worker's occupational disease insurance as provided
19 under this section, any member of the fire department or police
20 department employed in the city carrying the worker's occupational
21 disease insurance under this section is limited to recovery of medical
22 and surgical care, medicines, laboratory, curative and palliative agents
23 and means, x-ray, diagnostic and therapeutic services to the extent that
24 the services are provided for in the worker's occupational disease
25 policy so procured by the city, and may not also recover in addition to
26 that policy for the same benefits provided in IC 36-8-4.

27 (e) If the medical benefits provided under a worker's occupational
28 disease policy procured by the common council terminate for any
29 reason before the police officer or firefighter is fully recovered, the
30 common council shall provide medical benefits that are necessary until
31 the police officer or firefighter is no longer in need of medical care.

32 (f) Nothing in this section affects the rights and liabilities of
33 employees and employers had by them prior to April 1, 1963, under
34 this chapter.

35 SECTION 9. IC 22-3-7-10 IS AMENDED TO READ AS
36 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 10. (a) **Except as**
37 **provided in subsection (c),** as used in this chapter, "occupational
38 disease" means a disease arising out of and in the course of the

1 employment. Ordinary diseases of life to which the general public is
 2 exposed outside of the employment shall not be compensable, except
 3 where such diseases follow as an incident of an occupational disease
 4 as defined in this section.

5 (b) A disease arises out of the employment only if there is apparent
 6 to the rational mind, upon consideration of all of the circumstances, a
 7 direct causal connection between the conditions under which the work
 8 is performed and the occupational disease, and which can be seen to
 9 have followed as a natural incident of the work as a result of the
 10 exposure occasioned by the nature of the employment, and which can
 11 be fairly traced to the employment as the proximate cause, and which
 12 does not come from a hazard to which workers would have been
 13 equally exposed outside of the employment. The disease must be
 14 incidental to the character of the business and not independent of the
 15 relation of employer and employee. The disease need not have been
 16 foreseen or expected but after its contraction it must appear to have had
 17 its origin in a risk connected with the employment and to have flowed
 18 from that source as a rational consequence.

19 (c) **In addition to subsections (a) and (b), in the event of a**
 20 **terrorist attack (as determined by the worker's compensation**
 21 **board) every employer shall pay and every employee shall accept**
 22 **compensation for occupational disease or death by occupational**
 23 **disease occurring while:**

24 (1) **the employee was engaged in the duties of employment at**
 25 **the time of the terrorist attack; or**

26 (2) **the employee was traveling to or from the place of**
 27 **employment whether or not during working hours, and:**

28 (A) **had reached the employer's premises;**

29 (B) **had reached the area where the employee parks a**
 30 **motor vehicle; or**

31 (C) **was in such close proximity to the place of employment**
 32 **as to be injured or killed as a result of a terrorist attack**
 33 **that directly involved the employer's premises or adjacent**
 34 **areas, including, but not limited to, adjacent travel routes**
 35 **and parking garages.**

36 (d) **Section 2 of this chapter and subsection (a) apply regardless**
 37 **of:**

38 (1) **whether the employee's activities were a benefit to the**

1 **employer at the time of the terrorist attack; or**

2 **(2) whether the terrorist act occurred during the employee's:**

3 **(A) lunch; or**

4 **(B) rest;**

5 **period.**

6 SECTION 10. IC 22-3-7-21 IS AMENDED TO READ AS
7 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 21. (a) No
8 compensation is allowed for any condition of physical or mental
9 ill-being, disability, disablement, or death for which compensation is
10 recoverable on account of accidental injury under chapters 2 through
11 6 of this article.

12 (b) No compensation is allowed for any disease or death knowingly
13 self-inflicted by the employee, or due to:

14 **(1) his** intoxication;

15 **(2) his** commission of an offense; ~~his knowing failure to use a~~
16 ~~safety appliance;~~

17 **(3) his** knowing failure to obey a reasonable written or printed
18 rule of the employer which has been posted in a conspicuous
19 position in the place of work **other than an order or regulation**
20 **set forth in subsection (c)(2); or**

21 **(4) his** knowing failure to perform any statutory duty.

22 The burden of proof is on the defendant.

23 **(c) This subsection does not apply to compensation due to a**
24 **school to work student under section 2.5(b)(2) of this chapter. Each**
25 **payment of monetary compensation allowed under sections 11, 15,**
26 **16, and 19 of this chapter shall be reduced by fifteen percent (15%)**
27 **for an occupational disease or a death resulting from an**
28 **occupational disease caused in any degree by the employee's**
29 **intentional:**

30 **(1) failure to use a safety appliance furnished by the employer**
31 **or required by the employer to be used by the employee; or**

32 **(2) failure to obey a lawful order or administrative regulation**
33 **issued by:**

34 **(A) the worker's compensation board; or**

35 **(B) the employer;**

36 **for the safety of the employees or the public.**

37 SECTION 11. IC 22-4-15-1, AS AMENDED BY P.L.290-2001,
38 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

JULY 1, 2002]: Sec. 1. (a) With respect to benefit periods established on and after July 6, 1980, an individual who has voluntarily left the individual's most recent employment without good cause in connection with the work or who was discharged from the individual's most recent employment for just cause is ineligible for ~~waiting period~~ or benefit rights for the week in which the disqualifying separation occurred and until the individual has earned remuneration in employment equal to or exceeding the weekly benefit amount of the individual's claim in each of eight (8) weeks. If the qualification amount has not been earned at the expiration of an individual's benefit period, the unearned amount shall be carried forward to an extended benefit period or to the benefit period of a subsequent claim.

(b) When it has been determined that an individual has been separated from employment under disqualifying conditions as outlined in this section, the maximum benefit amount of ~~his~~ **the individual's** current claim, as initially determined, shall be reduced by twenty-five percent (25%). If twenty-five percent (25%) of the maximum benefit amount is not an even dollar amount, the amount of such reduction will be raised to the next higher even dollar amount. The maximum benefit amount may not be reduced by more than twenty-five percent (25%) during any benefit period or extended benefit period.

(c) The disqualifications provided in this section shall be subject to the following modifications:

(1) An individual shall not be subject to disqualification because of separation from the individual's employment if:

(A) the individual left to accept with another employer previously secured permanent full-time work which offered reasonable expectation of continued covered employment and betterment of wages or working conditions; and thereafter was employed on said job;

(B) having been simultaneously employed by two (2) employers, the individual leaves one (1) such employer voluntarily without good cause in connection with the work but remains in employment with the second employer with a reasonable expectation of continued employment; or

(C) the individual left to accept recall made by a base period employer.

(2) An individual whose unemployment is the result of medically

1 substantiated physical disability and who is involuntarily
2 unemployed after having made reasonable efforts to maintain the
3 employment relationship shall not be subject to disqualification
4 under this section for such separation.

5 (3) An individual who left work to enter the armed forces of the
6 United States shall not be subject to disqualification under this
7 section for such leaving of work.

8 (4) An individual whose employment is terminated under the
9 compulsory retirement provision of a collective bargaining
10 agreement to which the employer is a party, or under any other
11 plan, system, or program, public or private, providing for
12 compulsory retirement and who is otherwise eligible shall not be
13 deemed to have left the individual's work voluntarily without
14 good cause in connection with the work. However, if such
15 individual subsequently becomes reemployed and thereafter
16 voluntarily leaves work without good cause in connection with the
17 work, the individual shall be deemed ineligible as outlined in this
18 section.

19 (5) An otherwise eligible individual shall not be denied benefits
20 for any week because the individual is in training approved under
21 Section 236(a)(1) of the Trade Act of 1974, nor shall the
22 individual be denied benefits by reason of leaving work to enter
23 such training, provided the work left is not suitable employment,
24 or because of the application to any week in training of provisions
25 in this law (or any applicable federal unemployment
26 compensation law), relating to availability for work, active search
27 for work, or refusal to accept work. For purposes of this
28 subdivision, the term "suitable employment" means with respect
29 to an individual, work of a substantially equal or higher skill level
30 than the individual's past adversely affected employment (as
31 defined for purposes of the Trade Act of 1974), and wages for
32 such work at not less than eighty percent (80%) of the individual's
33 average weekly wage as determined for the purposes of the Trade
34 Act of 1974.

35 (6) An individual is not subject to disqualification because of
36 separation from the individual's employment if:

37 (A) the employment was outside the individual's labor market;

38 (B) the individual left to accept previously secured full-time

1 work with an employer in the individual's labor market; and
 2 (C) the individual actually became employed with the
 3 employer in the individual's labor market.

4 (7) An individual who, but for the voluntary separation to move
 5 to another labor market to join a spouse who had moved to that
 6 labor market, shall not be disqualified for that voluntary
 7 separation, if the individual is otherwise eligible for benefits.
 8 Benefits paid to the spouse whose eligibility is established under
 9 this subdivision shall not be charged against the employer from
 10 whom the spouse voluntarily separated.

11 **(8) An individual who is an affected employee (as defined in**
 12 **IC 22-4-43-1(1)) and is subject to the work sharing**
 13 **unemployment insurance program under IC 22-4-43 is not**
 14 **disqualified from participating in the work sharing**
 15 **unemployment insurance program for being an affected**
 16 **employee.**

17 As used in this subsection, "labor market" means the area surrounding
 18 an individual's permanent residence, outside which the individual
 19 cannot reasonably commute on a daily basis. In determining whether
 20 an individual can reasonably commute under this subdivision, the
 21 department shall consider the nature of the individual's job.

22 (d) "Discharge for just cause" as used in this section is defined to
 23 include but not be limited to:

- 24 (1) separation initiated by an employer for falsification of an
- 25 employment application to obtain employment through
- 26 subterfuge;
- 27 (2) knowing violation of a reasonable and uniformly enforced rule
- 28 of an employer;
- 29 (3) unsatisfactory attendance, if the individual cannot show good
- 30 cause for absences or tardiness;
- 31 (4) damaging the employer's property through willful negligence;
- 32 (5) refusing to obey instructions;
- 33 (6) reporting to work under the influence of alcohol or drugs or
- 34 consuming alcohol or drugs on employer's premises during
- 35 working hours;
- 36 (7) conduct endangering safety of self or coworkers; or
- 37 (8) incarceration in jail following conviction of a misdemeanor or
- 38 felony by a court of competent jurisdiction or for any breach of

1 duty in connection with work which is reasonably owed an
 2 employer by an employee.

3 SECTION 12. IC 22-4-43 IS ADDED TO THE INDIANA CODE
 4 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 5 JULY 1, 2002]:

6 **Chapter 43. Work Sharing**

7 **Sec. 1. The following definitions apply throughout this chapter:**

8 (1) "Affected employee" means an individual who has been
 9 continuously on the payroll of an affected unit for at least
 10 three (3) months before the employing unit submits a work
 11 sharing plan.

12 (2) "Affected unit" means a specific plant, department, shift,
 13 or other definable unit of an employing unit:

14 (A) that has at least two (2) employees; and

15 (B) to which an approved work sharing plan applies.

16 (3) "Approved work sharing plan" means a plan that satisfies
 17 the purpose set forth in section 2 of this chapter and has the
 18 approval of the commissioner.

19 (4) "Commissioner" means the commissioner of workforce
 20 development appointed under IC 22-4.1-3-1.

21 (5) "Employee association" means:

22 (A) an association that is a party to a collective bargaining
 23 agreement under which it may negotiate a work sharing
 24 plan; or

25 (B) an association authorized by all of its members to
 26 become a party to a work sharing plan.

27 (6) "Normal weekly work hours" means the lesser of:

28 (A) the number of hours in a week that an employee
 29 customarily works for the regular employing unit; or

30 (B) forty (40) hours.

31 (7) "Work sharing benefit" means benefits payable to an
 32 affected employee for work performed under an approved
 33 work sharing plan, including benefits payable to a federal
 34 civilian employee or former member of the armed forces
 35 under 5 U.S.C. 8500 et seq., but does not include benefits that
 36 are otherwise payable under this article.

37 (8) "Work sharing employer" means an employing unit or
 38 employer association for which a work sharing plan has been

1 approved.

2 (9) "Work sharing plan" means a plan of an employing unit
3 or employer association under which:

4 (A) normal weekly work hours of affected employees are
5 reduced; and

6 (B) affected employees share the work that remains after
7 the reduction.

8 Sec. 2. The work sharing unemployment insurance program
9 seeks to:

10 (1) preserve the jobs of employees and the work force of an
11 employer during lowered economic activity by reduction in
12 work hours or workdays rather than by a layoff of some
13 employees while other employees continue their normal
14 weekly work hours or workdays; and

15 (2) ameliorate the adverse effect of reduction in business
16 activity by providing benefits for the part of the normal
17 weekly work hours or workdays in which an employee does
18 not work.

19 Sec. 3. An employing unit or employee association that wishes
20 to participate in the work sharing unemployment insurance
21 program shall submit to the commissioner a written work sharing
22 plan that the employing unit or representative of the employee
23 association has signed.

24 Sec. 4. (a) Within fifteen (15) days after receipt of a work
25 sharing plan, the commissioner shall give written approval or
26 disapproval of the plan to the employing unit or employee
27 association.

28 (b) The decision of the commissioner to disapprove a work
29 sharing plan is final and may not be appealed.

30 (c) An employing unit or employee association may submit a
31 new work sharing plan not less than fifteen (15) days after
32 disapproval of a work sharing plan.

33 Sec. 5. The commissioner shall approve a work sharing plan
34 that meets the following requirements:

35 (1) The work sharing plan must apply to:

36 (A) at least ten percent (10%) of the employees in an
37 affected unit; or

38 (B) at least twenty (20) employees in an affected unit in

1 which the work sharing plan applies equally to all affected
2 employees.

3 (2) The normal weekly work hours of affected employees in
4 the affected unit shall be reduced by at least ten percent
5 (10%) but the reduction may not exceed fifty percent (50%)
6 unless the fifty percent (50%) limit is waived by the
7 commissioner.

8 **Sec. 6. A work sharing plan must:**

- 9 (1) identify the affected unit;
- 10 (2) identify each employee in the affected unit by:
- 11 (A) name;
- 12 (B) Social Security number; and
- 13 (C) any other information that the commissioner requires;
- 14 (3) specify an expiration date that is not more than six (6)
- 15 months after the effective date of the work sharing plan;
- 16 (4) specify the effect that the work sharing plan will have on
- 17 the fringe benefits of each employee in the affected unit,
- 18 including:
- 19 (A) health insurance for hospital, medical, dental, and
- 20 similar services;
- 21 (B) retirement benefits under benefit pension plans as
- 22 defined in the federal Employee Retirement Security Act
- 23 (29 U.S.C. 1001 et seq.);
- 24 (C) holiday and vacation pay;
- 25 (D) sick leave; and
- 26 (E) similar advantages;
- 27 (5) certify that:
- 28 (A) each affected employee has been continuously on the
- 29 payroll of the employing unit for three (3) months
- 30 immediately before the date on which the employing unit
- 31 or employer association submits the work sharing plan;
- 32 and
- 33 (B) the total reduction in normal weekly work hours is in
- 34 place of layoffs that would have:
- 35 (i) affected at least the number of employees specified in
- 36 section 5(1) of this chapter; and
- 37 (ii) would have resulted in an equivalent reduction in
- 38 work hours; and

1 **(6) contain the written approval of:**

2 **(A) the collective bargaining agent for each collective**
 3 **bargaining agreement that covers any affected employee**
 4 **in the affected unit; or**

5 **(B) if there is not an agent, a representative of the**
 6 **employees or employee association in the affected unit.**

7 **Sec. 7. If a work sharing plan serves the work sharing employer**
 8 **as a transitional step to permanent staff reduction, the work**
 9 **sharing plan must contain a reemployment assistance plan for each**
 10 **affected employee that the work sharing employer develops with**
 11 **the commissioner.**

12 **Sec. 8. The work sharing employer shall agree to:**

13 **(1) submit reports that are necessary to administer the work**
 14 **sharing plan; and**

15 **(2) allow the department to have access to all records**
 16 **necessary to:**

17 **(A) verify the work sharing plan before its approval; and**

18 **(B) monitor and evaluate the application of the work**
 19 **sharing plan after its approval.**

20 **Sec. 9. (a) An approved work sharing plan may be modified if**
 21 **the modification meets the requirements for approval under**
 22 **section 6 of this chapter and the commissioner approves the**
 23 **modifications.**

24 **(b) An employing unit may add an employee to a work sharing**
 25 **plan when the employee has been continuously on the payroll for**
 26 **three (3) months.**

27 **(c) An approved modification of a work sharing plan may not**
 28 **change its expiration date.**

29 **Sec. 10. (a) An affected employee is eligible under section 12 of**
 30 **this chapter to receive work sharing benefits for each week in**
 31 **which the commissioner determines that the affected employee is:**

32 **(1) able to work; and**

33 **(2) available for more hours of work or full-time work for the**
 34 **worksharing employer.**

35 **(b) An affected employee who otherwise is eligible may not be**
 36 **denied work sharing benefits for lack of effort to secure work as set**
 37 **forth in IC 22-4-14-3 or for failure to apply for available suitable**
 38 **work as set forth in IC 22-4-15-2 from a person other than the**

1 work sharing employer.

2 (c) An affected employee shall apply for benefits under
3 IC 22-4-17-1.

4 (d) An affected employee who otherwise is eligible for benefits
5 is:

6 (1) considered to be unemployed for the purpose of the work
7 sharing unemployment insurance program; and

8 (2) not subject to the requirements of IC 22-4-14-2.

9 Sec. 11. The weekly work sharing unemployment compensation
10 benefit due to an affected worker is determined in STEP FOUR of
11 the following formula:

12 STEP ONE: Determine the weekly benefit that would be due
13 to the affected employee under IC 22-4-12-4.

14 STEP TWO: Determine the percentage of reduction in the
15 employee's normal work hours as to those under the approved
16 work sharing plan.

17 STEP THREE: Multiply the number determined in STEP
18 ONE by the quotient determined in STEP TWO.

19 STEP FOUR: If the product determined under STEP THREE
20 is not a multiple of one dollar (\$1), round down to the nearest
21 lower multiple of one dollar (\$1).

22 Sec. 12. (a) An affected employee is eligible to receive not more
23 than twenty-six (26) weeks of work sharing benefits during each
24 benefit year.

25 (b) The total amount of benefits payable under IC 22-4-12-4 and
26 work sharing benefits payable under this chapter may not exceed
27 the total payable for the benefit year under IC 22-4-12-4(a).

28 Sec. 13. The board shall adopt rules under IC 4-22-2 applicable
29 to partially unemployed workers for determining their weekly
30 benefit amount due under this chapter, subject to IC 22-4-12-5(b).

31 Sec. 14. During a week in which an affected employee who
32 otherwise is eligible for benefits does not work for the work
33 sharing employer:

34 (1) the individual shall be paid benefits in accordance with
35 this chapter; and

36 (2) the week does not count as a week for which a work
37 sharing benefit is received.

38 Sec. 15. During a week in which an employee earns wages under

1 an approved work sharing plan and other wages, the work sharing
 2 benefit shall be reduced by the same percentage that the combined
 3 wages are of wages for normal weekly work hours if the other
 4 wages:

5 (1) exceed the wages earned under the approved work sharing
 6 plan; and

7 (2) do not exceed ninety percent (90%) of the wages that the
 8 individual earns for normal weekly work hours.

9 This computation applies regardless of whether the employee
 10 earned the other wage from the work sharing employer or other
 11 employer.

12 Sec. 16. While an affected employee applies for or receives work
 13 sharing benefits, the affected employee is not eligible for:

14 (1) extended benefits under IC 22-4-12-4; or

15 (2) supplemental federal unemployment compensation.

16 Sec. 17. The commissioner may revoke approval of an approved
 17 work sharing plan for good cause, including:

18 (1) conduct or an occurrence that tends to defeat the intent
 19 and effective operation of the approved work sharing plan;

20 (2) failure to comply with an assurance in the approved work
 21 sharing plan;

22 (3) unreasonable revision of a productivity standard of the
 23 affected unit; and

24 (4) violation of a criterion on which the commissioner based
 25 the approval of the work sharing plan.

26 SECTION 13. [EFFECTIVE JULY 1, 2002] (a) Notwithstanding
 27 IC 22-4-43-13, as added by this act, the unemployment insurance
 28 board shall carry out the duties imposed upon it under
 29 IC 22-4-43-13, as added by this act, under interim written
 30 guidelines approved by the commissioner of workforce
 31 development.

32 (b) This SECTION expires on the earlier of the following:

33 (1) The date rules are adopted under IC 22-4-43-13, as added

- 1 **by this act.**
- 2 **(2) December 31, 2003."**
- 3 Renumber all SECTIONS consecutively.
 (Reference is to SB 71 as reprinted February 4, 2002.)

and when so amended that said bill do pass.

Representative Liggett